

NATIONAL ORGANIC STANDARDS BOARD
FINAL RECOMMENDATION ADDENDUM NUMBER 5

**COMMERCIAL NON-AVAILABILITY OF SUITABLE INGREDIENTS
IN ORGANIC FORM**

Date Adopted: April 25, 1995
Location: Orlando, Florida

LEGISLATIVE REVIEW

References possibly related to commercial availability in handling and in the use of non-organic, non-synthetic materials.

Section 2111(a)(4)(OFPA):

(a) For a handling operation to be certified under this title, each person on such handling operation shall not, with respect to any agricultural product covered by this title:

(4) add any ingredients that are not organically produced in accordance with this title and the applicable organic certification program, unless such ingredients are included on the National List and represent not more than 5 percent of the weight of the total finished product (excluding salt and water);

Sections 2118(c)(1)(A)(ii) and 2118(c)(B)(iii)(OFPA):

(c) Guidelines for Prohibitions or Exemptions.

(1) Exemption for prohibited substances. The National List may provide for the use of substances in an organic farming or handling operation that are otherwise prohibited under this title only if:

(A) the Secretary determines, in consultation with the Secretary of Health and Human Services and Administrator of the Environmental Protection Agency, that the use of such substances:

(ii) is necessary to the production or handling of the agricultural product because of the unavailability of wholly natural substitute products;

(B) the substance :

(iii) is used in handling and is non-synthetic but is not organically produced;

Section 2119(m)(6)(OFPA):

(m) Evaluation. In evaluating substances considered for

inclusion in the proposed National List or proposed amendment to the National List, the Board shall consider: (6) the alternatives to using the substance in terms of practices or other available materials;

Senate Committee Report, page 299:

"The committee intends that the guidelines for processed food ingredients on the National List be that such ingredients are difficult or impossible to obtain."

BACKGROUND

The Committee has struggled with the complexity of trying to define and regulate "commercial availability" as it relates to a minor ingredient in an organic food. The definition of commercial availability must encompass more than the mere existence of an organically grown and processed form of the commodity in question. The following list illustrates both the complexity and subjectivity of defining availability.

- * Supply must be adequate for handler's volume requirements. For a handler to commit to the development and production of a new item, or the cost and effort to make changes in an existing product, there has to be a fair amount of certainty that the ingredient under consideration will be available into the foreseeable future.
- * Quality (grade or specification, color, character, defects, etc.)
- * Suitability in product formulation. As products become more complex, the chemical characteristics of minor ingredients become more critical. The way organic ingredients interact must be consistent in order to perform successfully.
- * Cost and cost stability where applicable. The market is the arbiter of whether a cost is too high to be acceptable.
- * Consistency of supply and evaluation of business risk.

DISCUSSION

The Committee would place the determination of organic availability within the domain of the handler. This will not create a regulatory loophole. Responsibility for making a comprehensive effort to obtain organic ingredients must reside

with the handlers, as they are best qualified to make this judgment. Responsibility for verifying that the effort has been made lies with the certifier. In this manner we allow each party to perform its proper function and avoid asking certifiers to become food technologists.

The Committee believes that the handlers who have achieved a 95% organic product are generally predisposed to use organic ingredients whenever practicable and that the competitive forces of the market will further drive organic ingredient use. To make this even more certain, the Committee strongly restates its belief that percent organic ingredient labeling is of critical importance.

RECOMMENDATION

The handler must make and document a comprehensive effort to obtain organic ingredients. The certifier must verify that the level of effort has been adequate. Specifically, the certifier must conduct an annual inspection of the handler and must review the Organic Handling Plan, as well as conduct an audit of handler records. Records which will be audited will include documentation for each non-organic minor ingredient which documents the unavailability of a suitable organic form. In this review, the certifier should:

1. verify that the handler has a process for seeking out organic ingredients in the Organic Handling Plan;
2. verify that the handler has made good faith efforts to obtain the organic form of the ingredient following steps outlined in the Plan;
3. withhold certification if, in the review of the Handling Plan, the certifier determines that sufficient documentation to justify use of a non-organic ingredient is absent; and
4. have available a listing of non-organic agricultural products used in foods labeled as "organic foods" by each handler that it certifies.